

**ENTERED**

November 09, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

N.F. SMITH &	§	CIVIL ACTION NO
ASSOCIATES L.P.,	§	4:22-cv-03877
Plaintiff,	§	
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
KARL KRUSE GMBH &	§	
CO. KG,	§	
Defendant.	§	

**ORDER ADOPTING  
MEMORANDUM AND RECOMMENDATION**

Plaintiff N.F. Smith & Associates, L.P. brought this action in state court alleging breach of contract, negligence, and breach of warranty of fitness for a particular purpose against Defendant Karl Kruse GmbH & Co. KG. Dkt 1-3.

Defendant removed the action and subsequently moved to dismiss the case for lack of personal jurisdiction or, alternatively, improper venue. Dkts 1 & 19. Plaintiff moved to remand the case, asserting that Defendant contractually waived its removal rights. Dkt 20.

Pending is a Memorandum and Recommendation by Magistrate Judge Christina A. Bryan dated October 10, 2023. Dkt 23. She recommends that Plaintiff's motion to remand be granted, given her interpretation that the forum selection clause contained in Plaintiff's purchase order waived Defendant's right to remove the case to federal court. She also recommends that Defendant's motion to dismiss be denied without prejudice to Defendant's right to raise the issues in state court.

Defendant timely filed objections to the Memorandum and Recommendation. Dkt 25.

The district court reviews *de novo* those conclusions of a magistrate judge to which a party has specifically objected. See FRCP 72(b)(3) & 28 USC § 636(b)(1)(C); see also *United States v Wilson*, 864 F2d 1219, 1221 (5th Cir 1989, *per curiam*). The district court may accept any other portions to which there's no objection if satisfied that no clear error appears on the face of the record. See *Guillory v PPG Industries Inc*, 434 F3d 303, 308 (5th Cir 2005), citing *Douglass v United Services Automobile Association*, 79 F3d 1415, 1430 (5th Cir 1996, *en banc*); see also FRCP 72(b) advisory committee note (1983).

Upon *de novo* review and determination, Defendant's objections lack merit. The Memorandum and Recommendation clearly details the pertinent facts and correctly applies controlling law.

The objections by Defendant Karl Kruse GmbH & Co. KG to the Memorandum and Recommendation of the Magistrate Judge are OVERRULED. Dkt 25.

No clear error otherwise appears upon review and consideration of the Memorandum and Recommendation, the record, and the applicable law.

The Memorandum and Recommendation of the Magistrate Judge is ADOPTED as the Memorandum and Order of this Court. Dkt 23.


The motion by Plaintiff to remand is GRANTED. Dkt 20.

The motion by Defendant to dismiss is DENIED WITHOUT PREJUDICE to appropriate reassertion on remand. Dkt 19.

This case is REMANDED to the 164th Judicial District Court of Harris County, Texas.

SO ORDERED.

Signed on November 9, 2023, at Houston, Texas.

  
Hon. Charles Eskridge  
United States District Judge